

End-of-life planning for transgender people

Anyone can talk to a lawyer for free at Tasmania Legal Aid.

To get free legal information call 1300 366 611, drop into our Hobart or Launceston office (no appointment necessary) or use the Legal Talk chat function on our website. We are open Monday to Friday, 9am to 5pm.

A lawyer can listen to your story and help identify the next steps you can take.

Here are some things that a transgender person might want to know as part of end-of-life planning.

What does a death certificate record?

A death certificate will record key legal and other information as at the time of death. Such information includes name, age, relationship status, name(s) of children, place of birth, place of death, occupation and usual residence. As the information recorded on a death certificate includes the legal status of someone at the time of their death, this will particularly affect a transgender person who has transitioned socially but has not changed the legal status of their gender.

What if I don't legally change my gender before I die?

Where a transgender person cannot legally change their gender there are legal and non-legal strategies to help protect their gender. These include:

- Making an Enduring Guardianship order, to ensure that health and lifestyle wishes are protected in the event that a transgender person cannot make these decisions for themselves due to loss of mental capacity. This may be important where if a transgender person needs to move into a care home arrangement, a guardian can ensure that they receive care and that wishes such as preferred clothes to be worn and preferred name and pronoun are used
- Ensuring that family and friends know how a transgender person is to be remembered and acknowledged after death.

What is a 'Living Will'?

While a valid Will conveys how someone wants their property – their money, assets and property – to be dealt with after their death, the Will can refer to a separate document which can contain someone's wishes for when they die. A 'final arrangements' document, sometimes also referred to as a 'Living Will' serves as a useful collection of someone's wishes and can cover a wide range of issues. In this document someone can discuss their wishes for burial or cremation, choice of tombstone or cemetery marker, and anything related to a final resting place. This document should be signed and dated and have someone witness the signing.

What wishes can I make about my burial?

Where someone has named an executor in their Will, the executor has the right to determine the details of burial or cremation. However, there is no legal obligation for the executor to carry out the wishes of the person who has died, even if those wishes are included in the Will or attached in a 'Living Will' document. In some instances, if the Will cannot be found in time, or the executor cannot take on the responsibility, the right to decide details related to a burial may be given to the next of kin or other close relative.

The best way someone can ensure that their wishes are carried out is to ensure that those wishes are known to friends and family. This

could be achieved by ensuring that key friends and family know the location of the original Will and that copies of the Will (and 'Living Will', if one has been prepared) are available. This will help a chosen executor to take responsibility for making funeral arrangements.

How can I determine what will be recorded on my gravestone?

If someone wants specific words on a gravestone or memorial, they may give specific instructions for their wishes to be carried out. A Will can direct that money from the estate be used to buy a specific gravestone or memorial, and a "Living Will" document can give direction as to specific words to be applied.

How can I ensure my preferred name, title and use of pronouns are used in a death notice?

It is not uncommon for different people to publish death notices to announce the death of a loved one. If someone wants a specific death notice published after their death, they can make such a wish known by instructing a trusted person to carry this out. These instructions may also be included in a 'Living Will'.

What if I was born outside of Tasmania?

In 2019 Tasmania changed its law so that transgender people who want to legally change their gender may do so more easily. This law applies to people who are born in Tasmania. Residents of Tasmania whose birth was registered in another State or Territory of Australia, or another country, will need to follow the law of where they were born.

This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.